

2000

# State of Utah v. Wendell H. Hoffman : Petition for Rehearing

Utah Supreme Court

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Robert L. Newey; Robert Wallace; Attorneys for Respondent.

Richard I. Ashton; Frank O. Walther; Attorneys for Appellant.

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

STATE OF UTAH

Plaintiff-Respondent,

vs.

WENDELL H. HOFFMAN

Defendant-Appellant.

Case No. 14198

**FILED**

FEB 18 1977

P E T I T I O N   F O R   R E H E A R I N G Clerk, Supreme Court, Utah

Appeal from the Judgment of the  
Second District Court for Weber County  
Honorable John F. Wahlquist

RICHARD I ASHTON  
420 Continental Bank Building  
Salt Lake City, Utah 84101

FRANK O. WALTHER  
124 Booth Lane  
Haverford, Pennsylvania 19041

Attorneys for Appellant

ROBERT L. NEWAY  
ROBERT WALLACE  
Weber County Attorney's Office  
Municipal Building  
Ogden, Utah 84401

Attorneys for Respondent

STATE OF UTAH,  
Plaintiff-Respondent,  
  
vs.  
  
WENDELL H. HOFFMAN,  
Defendant-Appellant,

Case No. 14198

1. On December 28, 1976, in the above entitled matter, this Honorable Court handed down its Decision and Opinion affirming the conviction of Defendant-Appellant on two counts of practicing medicine without a license, in violation of Utah Code Annotated, Section 58-12-30 (1953) as amended.
2. Said Decision and Opinion denied the contentions of Defendant-Appellant and held that the above Act, the "Medical Practice Act", is Constitutional as applied to him as a practitioner of a healing Art alternative to Allopathic Medicine regulated exclusively by that Act.
3. Defendant-Appellant prays this Honorable Court, in accordance with Rule 76 (e), to grant a Rehearing of this Appeal for the errors in such Decision and Opinion alleged as follows:
  - a. Said Decision and Opinion effectively denies to a substantial number of citizens who have first resorted, without success, to Allopathic methods of healing, access to and freedom of choice of alternative methods, for their

Healing Art methods regulated and required by Utah Code Annotated, Section 58-12-26 (1953) as amended, et seq., the "Medical Practice Act" , in particular, under Section 58-12-26 thereof and under Utah Code Annotated Section 58-1-5, which latter section gives complete control over any and all methods of healing in Utah (other than those specifically excepted by the "Medical Practice Act") to a committee composed exclusively of Allopathic physicians.

b. Said Decision and Opinion further effectively denies to all other citizens of Utah access to and freedom of choice, in the first instance, of such alternative methods of healing, including those of Defendant-Appellant, other than Allopathic methods of healing (and those soecifically excepted by the "Medical Practice Act").

c. Said Decision and Opinion further effectively denies to the citizens of Utah the benefits of research and experience of any newly developed healing methods, including those of Defendant-Appellant, if researched and developed independently of the Allopathic Healing Profession, especially if such alternative methods conflict with, are as effective but less expensive as the methods of Allopathy, or are more effective than, and threaten obsolescence of Allopathic methods.

d. Said Decision and Opinion erred in holding that the purpose of the "Medical Practice Act" is to protect the citizens of Utah against fraud and quackery. Instead,

it is alleged, the purpose is to protect the citizens against hazard from unqualified practice of Allopathic methods of healing, by reason of the fact that such methods involve the use of dangerous and toxic drugs, radiation therapy and surgery. Fraud and quackery are not an element of the offense proscribed by the Act. Defendant-Appellant was precluded by the Act from offering any proof that his healing methods are not fraudulent or quackery, since such proof is no defense to prosecution under the Act.

e. The citizens of Utah are amply protected against fraud and quackery by Utah Code Annotated, Sections 76-20-8 and 58-17-14.13 and by civil remedies for malpractice or negligence. A prosecution or suit under the above Acts or common law remedies would have equitably permitted Defendant-Appellant to offer proof that his methods are effective and not fraudulent or quackery as a defense thereto.

f. Said Decision and Opinion is erroneously premised on an assumption that Defendant-Appellant's methods of healing are fraudulent and ridiculous. Such assumption is entirely unsupported by any competent testimony or proof in the record of this case and was not in issue. The assumption is a bare conclusion bred from unfamiliarity with and lack of understanding of Defendant-Appellant's methods of healing.

g. Defendant-Appellant's personal and professional reputation has been unwarrantably seriously damaged by the publication in said Decision and Opinion of the unsupported statement that his methods are fraudulent and ridiculous.

h. Said Decision and Opinion erred in assuming that any and all methods of healing, whether or not using dangerous and toxic remedies and methods, such as those used by Allopathy, are per se so hazardous to the citizens of Utah as to empower the Legislature, under the Police Power of the State, to regulate methods alternative to those of Allopathy by an Act, such as the "Medical Practice Act", which requires training, experience and examination in Allopathic methods and restricts the practice of healing methods to those sanctioned by Allopathy.

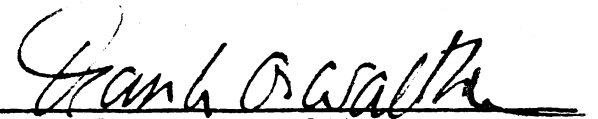
i. Said Decision and Opinion erred in denying this Honorable Court as a forum to the citizens of Utah in which to determine whether the legislative healing standards prescribed by the "Medical Practice Act" are so unreasonable, discriminatory, and in aid of the monopoly of the Healing Art Profession, Allopathy, over all other such healing art professions (except those statutorily excepted) as to be unconstitutional, if applied to Defendant-Appellant and practitioners of his or other alternative methods.

j. Said Decision and Opinion erred in failing to consider Defendant-Appellant's contention that Article I, Section 3, of the Constitution of Utah and Article Six of the Constitution of the United States, by the plain and generally understood meaning of their words, apply to the State of Utah all of the Constitution of the United States, including the Fifth Amendment right not to be prosecuted except upon the Presentment or Indictment of a Grand Jury of an accused's peers. The said Decision and Opinion, instead, cited cases holding that such Fifth Amendment right is not applicable to the State of Utah under the Due Process clauses of the Fifth and Fourteenth Amendments - which Defendant-Appellant does not dispute or deny.

WHEREFORE, it is requested that the Court grant and order a Rehearing of its Decision and Opinion for the reasons set forth above, as more fully discussed in the attached Brief of the Defendant-Appellant.

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Richard I ashton

  
Frank O. Walther

Attorneys for Defendant-Appellant